

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1473 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANGLIPRASD R SHRIVASTAVA

Versus

ABDULGAFAR SULEMAN MEMON (DECEASED)

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Appearance:

MR BR PARIKH for the appellant.

MR PV NANAVATI for Respondents No. 1 & 3.

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/02/97

ORAL JUDGEMENT

Appellant who is the original claimant, has filed this First Appeal under S.110-D of the Motor Vehicles Act, 1939, challenging the judgment and award dated 17.3.1981, passed by the Main Motor Accident Claims Tribunal No.1, Ahmedabad, in Motor Accident Claims Tribunal Application No. 3 of 1979, whereby the Tribunal awarded Rs.13,045.55 ps. to the appellant-claimant, to

be recovered from Opponents No. 1, 2 and 3 with interest at the rate of 6% per annum from the date of the application till payment and costs of the application. However, the Tribunal rejected rest of the claim of Rs.11,954.45ps.

2. The claimant-appellant who was aged 70 years at the time of the incident, met with an accident on 18.10.1978 when he was proceeding towards Lal Darwaja Bus Stand for catching bus. An autorickshaw bearing RTO registration No.GTH 5623 which was driven by opponent no.1 in a rash and negligent manner, came from the side of Apna Bazar and dashed against the claimant. As a result, the claimant fell down and sustained injuries on his left thigh. The claimant therefore, filed the claim application before the Tribunal claiming compensation of Rs.25,000/- for the injuries sustained by him in the vehicular accident. Before the Tribunal, Original Opponents No.2 and 3 filed their written statement and contested the application for compensation. As the claim involved in the application was Rs.25,000/-, it was decided on affidavits by adopting summary procedure.

3. It is not in dispute that the claimant had sustained injuries in the vehicular accident due to rash and negligent driving of autorickshaw by original opponent no.2. Admittedly the autorickshaw involved in the accident was owned by Opponent no.1, who in turn has insured it with Opponent No.3 - The United India Fire & General Insurance Co.Ltd. Due to the accident, the claimant had sustained injuries on his left thigh and as per the medical certificate, he had sustained fracture of neck femur. The claimant was admitted in Civil Hospital from 19.10.1978 to 29.11.1978, and had to take rest. The injury certificate issued by the hospital shows that the claimant had sustained the following injuries :

- (1) Swelling and tenderness over right hip joint;
- (2) Fracture of neck femur on right side.

In support of the claim, the claimant has produced his own affidavit and the affidavit of Dr.Nalin M.Shah, who had assessed permanent disability of the claimant at 20 per cent taking the capacity of the whole body at 100 percent.

4. After appreciating the affidavits filed by the respective parties, and the disability suffered by the claimant, the Tribunal awarded Rs.6,000/- under the head of pain, shock and suffering. The Tribunal also awarded Rs.105.55ps. towards medical expenses and Rs.231/- for

transportation charges. Under the head of future economic loss, the Tribunal assessed monthly loss at Rs.100/-, and taking the yearly loss at Rs.1,200/- and applying the multiplier of 5, the Tribunal awarded Rs.6,000/- under the said head.

5. The learned Advocate for the appellant-claimant has submitted that the Tribunal has erred in not awarding Rs.15,000/- under the head of pain, shock and suffering. It is further submitted that the claimant was distributing newspapers to various Libraries run by Municipal Corporation and was earning more than Rs.1,200/- per month as commission charges.

On the other hand, learned Advocate Mr.P V Nanavati, who appears for the Insurance Company and the owner of the autorickshaw has submitted that the award of the Tribunal is just and proper and should not be interfered with.

6. Due to the injuries sustained by him in the accident, the appellant was admitted in Civil Hospital, from 19.10.1978 and was kept as indoor patient upto 29.11.1978. During this period, the appellant must have suffered great pain and shock. Looking to the period for which he was admitted in the hospital and thereafter also as he was bed-ridden, it would be just and proper to award Rs.7,500/- as compensation under the head of pain, shock and sufferings. It is an admitted fact that the claimant was running newspaper agency and was distributing newspapers to the citizens and various libraries run by the Ahmedabad Municipal Corporation. There is no definite evidence about the monthly income of the appellant. However, loss of bodily integrity gives a right to damages even if there is no damage, at all, to the earning capacity, and in such cases damages are to be awarded commensurate with the extent, gravity and duration of the injury. In the present case, looking to the nature of the injuries sustained by the appellant, and the period of his hospitalisation, it can be said that the physical integrity of the appellant was broken, which was of permanent nature and that permanent disability reflected in the earning capacity of the appellant. The permanent disability with which the claimant is saddled on account of the accident will be permanently reflected in his earning capacity according to the extent and gravity of his physical handicap. (see: 1980 GLR, p.221). The appellant was looking after distribution of newspapers. It is true that the appellant himself was not distributing the newspapers, but he employed certain persons, and got the same

distributed at the various institutions run by the Ahmedabad Municipal Corporation.

7. The disability certificate shows that the appellant found it difficult to sit cross-legged because of the injury sustained by him in the accident. There was shortening of his right leg by 1.25". This physical impairment must have caused some discomfort to the appellant and therefore, the monthly loss can be conveniently assessed at Rs.200/-. Thus the yearly loss of income would come to Rs.2400/-. The appellant was aged 70 years at the time of accident. Therefore, multiplier of 5 applied by the Tribunal is quite just and proper, and on that basis, the appellant would be entitled to get Rs.12,000/- under the head of Future Economic Loss. The compensation under the head of special diet, medicine, transportation charges, etc. awarded by the Tribunal requires to be upheld.

8. As a result of the foregoing discussion, the appellant would be entitled to get Rs.7,500/- under the head of pain, shock and suffering instead of Rs.6,000/awarded by the Tribunal. The appellant would also get Rs.12,000/- under the head of future economic loss instead of Rs.6,000/- awarded by the Tribunal. Thus the appellant would get additional compensation of Rs.7,500/for the injuries sustained by him in the accident. The above amount shall carry interest at the rate of 6% per annum from the date of original claim application till payment and proportionate costs. The respondents shall deposit the additional awarded amount with interest and proportionate costs in the Tribunal within Eight weeks from today. Accordingly, this appeal is partly allowed with proportionate costs.

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(abraham)